IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5797 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G.S.R.T.CORPORATION

Versus

MADHAVJI LALJIBHAI RATHOD

Appearance:

1. Special Civil Application No. 5797 of 1987

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/05/2003

ORAL JUDGEMENT

What is challenged in this petition under Article 227 of the Constitution is the judgment and award dated 19.9.1986 passed by the Labour Court, Rajkot in Reference

(LCR) No.1415 of 1984.

2. The respondent was serving as a Conductor in the Dhari depot of the petitioner-Gujarat State Road Transport Corporation. While he was on duty on 20/6/1981, in a bus plying from Dhari to Ambardi, the Checking Officer got the bus stopped near Khodiyar cross roads and on checking found that 14 passengers from Dhari to Ambardi were not issued tickets though the respondent had recovered fare from the said passengers. The respondent was, therefore, chargesheeted in a departmental inquiry and dismissed from service. The respondent challenged the said order before the Labor Court which allowed the Reference and held that the respondent was in the process of issuing tickets when the checking took place and, therefore, the respondent did not have any intention to misappropriate the fare recovered from those 14 passengers. The Labour Court, accordingly, held the termination to be illegal and directed the Corporation to reinstate the respondent to his original post with continuity of service with full backwages and also directed the Corporation to pay the respondent Rs.100/- by way of costs. It is this award, which is challenged by the Corporation in this petition.

3. Mr Hardik Raval, learned counsel for the petitioner-Corporation has submitted that the respondent was supposed to issue the tickets at Dhari and was not supposed to do road booking and, therefore, non-issuance of tickets after recovering fare from the 14 passengers amounted to misappropriation. It is further submitted that in any view of the matter, the Labour court has erred in granting reinstatement and backwages to the respondent.

4. On the other hand, Mr Rathod, learned counsel for the respondent-workman has submitted that the Labour Court has given the finding of fact on the question of alleged misconduct and, therefore, this Court may not interfere with such a finding in a petition under Article 227 of the Constitution. It is further submitted that when the dismissal order is found to be illegal, the Labour Court has rightly awarded the relief of reinstatement and full backwages.

5. Before proceeding to deal with the rival submissions, it is necessary to note, at this stage, that when the petition came up for hearing on 21.12.1987 a Division Bench of this Court issued Rule and notice as to interim relief. When the petition came up for hearing of interim relief on 20.1.1988, the respondent-workman was

served but none appeared on his behalf. Hence the Division Bench granted interim stay against the implementation of the award insofar as the reinstatement is concerned on condition that the Corporation shall follow the provisions of Section 17B of the Industrial Disputes Act. Thereafter, the respondent-workman appeared and filed a Civil Application for modification of the aforesaid order and thereupon by order dated 19.1.1989 in Civil Application No.2242 of 1988, this Court modified the interim order and directed the Corporation to pay the respondent-workman 25% of the backwages. The respondent was also permitted to withdraw the amount on furnishing security to the satisfaction of the Labour Court, Rajkot. Thus the respondent has remained out of employment subject to the operation of the provisions of Section 17B and receipt of 25% of the backwages.

6. Having heard the learned counsel for the parties on merits of the controversy, it appears that the first issue to be considered is - whether the departmental inquiry was held in violation of the principles of natural justice. The submission on behalf of the respondent-workman that the finding given by the Labour Court that fair opportunity was not given is a finding of fact. However, the Labour Court has observed that none of the 14 passengers were examined and, therefore, there was no proper inquiry. There is some substance in the grievance made by Mr Hardik Raval that this part of the judgment is vulnerable inasmuch as the reporter who had checked the bus was examined and, therefore, it may not be possible for the Corporation to call the passengers as witnesses at such inquiry.

7. It does appear that the Labour Court was not right in holding that the passengers from whom fare was recovered but were not issued tickets were required to be examined as witnesses. In State of Haryana vs. Rattan Singh, AIR 1977 SC 1512, the Apex Court has held that where the evidence of Checking Inspector of the State Road Transport Corporation was some evidence which had relevance to the charge against the bus conductor, it cannot be said that there is violation of principles of natural justice if those passengers are not examined. It was further observed that fairplay is the basis. However, it cannot be insisted that passengers who had come in and gone out should be chased and brought before the Tribunal before a valid finding could be recorded. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular Court proceedings but in a fair

commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny.

8. If this was the only reason given by the Labour Court for setting aside the order of termination, this Court would have interfered. However, the Labour Court has further held that the respondent-workman was not given full opportunity to defend his case and no sufficient papers were supplied to him. The representations/ submissions which he had made on 28th and 30th August, 1982 were not taken into account. In view of this finding recorded by the Labour Court that the inquiry was held in violation of the principles of natural justice, the Labour Court was justified in examining the matter on merits.

9. As far as the discussion on merits of the charge is concerned, since it pertains to appreciation of factual evidence, this Court would not reappreciate the evidence and disturb the finding of fact given by the Labour Court that the booking was going on and way bill was open which indicated that the respondent-workman was issuing tickets but because the checking started he could not issue tickets to the 14 passengers after issuing tickets to the other 29 passengers.

10. In view of the above discussion, no interference is warranted with the finding of the Labour court that the termination order was illegal and with the consequential order for reinstatement in service.

11. As far as the direction for full backwages is concerned, having regard to the order dated 19.1.1989 in Civil Application No.2242 of 1988 requiring the Corporation to pay the respondent-workman 25% of the backwages and also the interim order dated 20.1.1988 requiring the Corporation to comply with the provisions of Section 17-B of the ID Act i.e. payment of last wages drawn, it appears to the Court that the interests of justice would be served if the direction given by the Labour Court for payment of full backwages is substituted by the following directions:-

(i) The respondent-workman is entitled to 25% of the backwages as per the order dated 19.1.1989 of this Court in Civil Application No.2242 of 1988 (if the amount is paid by now, no further amount is required to be paid), and

(ii) the amount which the respondent-workman is entitled to get under the provisions of Section 17-B, which has been paid to the respondent-workman so far is not required to be refunded to the petitioner-Corporation.

12. In view of the above discussion, the petition is partly allowed. The direction given by the Labour Court for reinstatement of the respondent-workman on his original post with continuity of service is not disturbed. However, the direction given by the Labour Court for payment of full backwages is substituted by the direction for payment of 25% of backwages (as indicated above) and the observation that the amount paid to the respondent-workman under Section 17-B of the Industrial Disputes Act, 1947 shall not be required to be refunded to the petitioner-Corporation.

It is clarified that the respondent-workman shall not be entitled to any other amount for the intervening period from the date of dismissal till the date of reinstatement, though the petitioner shall be granted all the notional benefits upon his reinstatement.

It is further directed that the petitioner-Corporation shall reinstate the respondent-workman in service with continuity of service by 1st June, 2003 and in case there is any delay in reinstatement of the respondent-workman, the petitioner-Corporation shall be liable to pay the respondent-workman salary from 1st June, 2003.

13. The petition is accordingly partly allowed. Rule is accordingly made absolute to the above extent only with no order as to costs.

(M.S. Shah, J)

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